

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL SCOTT LAING,

Defendant-Appellant.

UNPUBLISHED

January 13, 2009

No. 279771

Oakland Circuit Court

LC No. 2007-213081-FJ

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of second-degree criminal sexual conduct, MCL 520c(1)(a) (victim under age 13). The trial court sentenced defendant to a prison term of 1 to 15 years. Defendant appeals as of right. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

The prosecution charged defendant with engaging in or attempting oral-genital contact with a seven- or eight-year-old girl in 1998. At trial, the trial court admitted under MCL 768.27a evidence that defendant had sexually assaulted a 10-year-old girl in 2000.

Defendant now contends that the trial court erred in admitting the testimony concerning his 2000 assault under MCL 768.27a because the statute violates the Separation of Powers clause, and its applicability to this case violates the Ex Post Facto clause. Defendant failed to preserve this issue at trial by objecting to the evidence on these same grounds. *People v Bauder*, 269 Mich App 174, 177-178; 712 NW2d 506 (2005). Therefore, we review the issue only for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

In *People v Pattison*, 276 Mich App 613, 618-620; 741 NW2d 558 (2007), this Court considered and rejected arguments identical to defendant’s constitutional contentions. Although defendant suggests that this Court wrongly decided *Pattison*, the decision remains binding and he offers no authority tending to undermine the reasoning or holdings in *Pattison*. MCR 7.215(J)(1). Consequently, we discern no plain constitutional error.

Defendant next complains that the trial court erred in admitting evidence regarding the 2000 assault because it had no relevance to the 1998 charges against him. Because defendant

preserved this objection at trial, we review for an abuse of discretion the trial court's evidentiary ruling. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

Defendant asserts that the evidence of the 2000 assault did not qualify for admissibility under MRE 404(b), but ignores that the trial court admitted this evidence under MCL 768.27a, not MRE 404(b). When the prosecution offers evidence under MCL 768.27a, it need not additionally show that the evidence meets the admissibility requirements of MRE 404(b). *People v Watkins*, 277 Mich App 358, 364-365; 745 NW2d 149 (2007); *Pattison*, *supra* at 618-619. Here, the evidence of defendant's 2000 assault was admissible under MCL 768.27a "for its bearing on any matter to which it is relevant." The 2000 victim's testimony that defendant sexually assaulted her at age 10 tended to increase the probability that he committed the charged listed offense against the instant victim during her youth because it shows his propensity for committing a specific type of crime; thus, evidence of the 2000 assault had relevance to this case. *Watkins*, *supra* at 364; *Pattison*, *supra* at 620-621. Furthermore, the charged 1998 offense and the 2000 assault both constitute "listed offenses," MCL 768.27a(2); MCL 28.722(e)(x), and defendant committed both offenses against minors.

We reject defendant's contention that evidence of the 2000 assault was inadmissible under the analysis in *People v Therrien*, 97 Mich App 633; 296 NW2d 8 (1979), because it bolstered the instant victim's credibility. The error in *Therrien* derived from the trial court's erroneous admission of prior consistent statements by the complainants in the absence of a "claim of recent fabrication." *Id.* at 635. Unlike *Therrien*, however, the trial court in this case properly admitted the relevant evidence of defendant's 2000 assault under MCL 768.27a.

With respect to defendant's claim that the 2000 evidence was "substantially prejudicial," the trial court found no substantial danger of unfair prejudice under MRE 403. The trial court correctly recognized that MRE 403 requires the exclusion of relevant evidence not because it may prejudice a defendant, but only when its "probative value is substantially outweighed by the danger of *unfair* prejudice." (Emphasis added). Defendant simply has not explained why the evidence of his 2000 assault embodied a danger of *unfair* prejudice that substantially outweighed its probative value in this case. See *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008) ("Unfair prejudice may exist where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence."). Moreover, the 1998 and 2000 assaults remained sufficiently dissimilar in their particulars that the 2000 assault evidence did not unfairly prejudice him. In summary, the trial court did not abuse its discretion by admitting evidence of defendant's 2000 assault.

Affirmed.

/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher

Smolenski, J. did not participate.